

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 185 of 1992

in

SPECIAL CIVIL APPLICATION No 1871 of 1981

with

LETTERS PATENT APPEAL No 186 of 1992

in

SPECIAL CIVIL APPLICATION NO. 1849 of 1981

with

LETTERS PATENT APPEAL NO. 269 of 1992

in

SPECIAL CIVIL APPLICATION NO. 1842 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES
5. Whether it is to be circulated to the Civil Judge? : YES

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STATE OF GUJARAT

Versus

ARVIND H. VYAS

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Appearance:

1. LETTERS PATENT APPEAL No. 185 of 1992  
MR KG SHETH, AGP instructed by M/s.M.G.Doshit & Co.  
for Appellants  
MR JIVANLAL M PATEL for Respondent No. 1  
MR BR KYADA for Respondent No. 2
2. LETTERS PATENT APPEAL No 186 of 1992

MR KG SHETH, AGP instructed by M/s. M.G.Doshit & Co.  
for Appellants

MRS HIRABEN R JOSHI for Respondent No. 1

MR MANOJ N POPAT for Respondent No. 2

3. LETTERS PATENT APPEAL NO. 269 of 1992

Ms KATHA GAJJAR, AGP instructed by M/s. M.G.Doshit &  
Co. for Appellants

MR SM MAZGAONKAR for respondent no.2.

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE

Date of decision: 21/09/1999

ORAL JUDGEMENT

(Per : Panchal,J.)

Letters Patent Appeal No. 186/92 was admitted by order dated April 28, 1992; whereas Letters Patent Appeal No.185/92 was admitted vide order dated June 25, 1992 and a direction was given that Letters Patent Appeal No.185/92 should be heard with Letters Patent Appeal No.186/92. Letters Patent Appeal No.269/92 was also admitted by order dated June 25, 1992 and a direction was given that this appeal should be heard with Letters Patent Appeal No.186/92. The three appeals involve identical question of facts and law and, therefore, in view of the joint request made by the learned Counsel for the parties, we propose to dispose of them by this common judgment.

2. The respondent no.1 in Letters Patent Appeal No.185/92 was appointed as a Forest Guard on February 24, 1977. At the relevant time he was working as such in Forest Department at Chotila. The respondent no.2 was appointed as Forest Guard on March 23, 1977 and at the relevant time he was working as such at Halvad. The first two respondents in Letters Patent Appeal No.186/92 were appointed as Forest Guards on February 24, 1977; whereas respondent no.3 in the said appeal was appointed as Grade Chokidar on October 1, 1977. The first two respondents were serving as Forest Guards at the relevant time, though at different places and respondent no.3 was serving as an Orderly Guard at Surendranagar at the relevant time. The respondent no.1 in Letters Patent Appeal No.269/92 joined service as Forest Guard on March 8, 1977; whereas respondent no.2 was appointed as Forest Guard by an order dated December 30, 1976. From the record of the case, it is evident that nearly five years after appointment of the respondents as Forest

Guard/Grade Chokidar, it was realised by Divisional Forest Officer, Surendranagar that they and other employees were irregularly recruited. Therefore, appellant no.1 in Letters Patent Appeal passed an order dated May 7, 1981 terminating the services of the respondents in these three appeals and others with effect from May 8, 1981. A copy of order passed by the appellant no.1 on May 7, 1981 is produced by the respondents with their respective petitions. The respondent no.1 in Letters Patent Appeal No.185/92 figures at serial no.1, whereas respondent no.2 in the said appeal figures at serial no.3 in the order dated May 7, 1981 passed by the Divisional Forest Officer, Surendranagar. The respondent no.1 in Letters Patent Appeal No.186/92 figures at serial no.2 in the said order and respondent no.2 in the said appeal figures at serial no.5 in the said order; whereas respondent no.3 figures at serial no.8 in the said order. The name of respondent no.1 in Letters Patent Appeal No.269/92 is shown at serial no.4 in the said order, whereas name of respondent no.2 in the said appeal is shown at serial no.7 in the said order. It may be stated that services of Mr. J.I.Joshi who was appointed as Forest Guard, were also terminated by the Divisional Forest Officer by order dated May 7, 1981 and his name was shown at serial no.6 in the said order. Mr. J.I.Joshi had challenged order terminating his services by instituting Special Civil Application No. 1926/81. The respondents in Letters Patent Appeal No.186/92 had challenged order terminating their services by filing Special Civil Application No.1849/81; whereas the respondents in Letters Patent Appeal No.185/92 had instituted Special Civil Application No.1871/81 challenging the order by which their services were terminated.

3. It may be stated that Special Civil Applications No. 1849/81, 1871/81 and 1926/81 were heard together and they were allowed by common order dated August 27, 1991 which was passed by the learned Single Judge. Feeling aggrieved by the judgment rendered in Special Civil Application No. 1926/81, State of Gujarat through its Secretary to Government, Forest and Environment Department, Sachivalaya, Gandhinagar had preferred Letters Patent Appeal No.49/92. The said appeal was partly allowed by Division Bench comprising S.B.Majmudar, Actg. C.J. (as he then was) and Y.B.Bhatt,J. by judgment dated March 30, 1992. In the above numbered appeal, the finding recorded by the learned Single Judge to the effect that order terminating services of Mr. J.I.Joshi, who had filed Special Civil Application No. 1926/81 was illegal, was upheld by the appellate bench,

but it was found that during the interregnum period, Mr. J.I.Joshi was employed gainfully and, therefore, direction was given to the Conservator of Forests, Junagadh Circle to hear him on the aspect of backwages and pass appropriate orders. The appeal was allowed only to this extent by judgment dated March 30, 1992. Though Special Civil Applications No. 1849/81 and 1871/81 were disposed of with Special Civil Application No. 1926/81, the appeals in those petitions could not be filed with Letters Patent Appeal No. 49/92 which was directed against judgment rendered in Special Civil Applications No.1849/81 and 1871/81, as there was delay in filing appeals. In those two matters, applications for condonation of delay caused in filing the appeals were filed, which were allowed and subsequently the appeals were entertained and admitted as referred to hereinabove. So far as Letters Patent Appeal No.269/92 is concerned, the respondents had filed Special Civil Application No. 1842/81 challenging legality of order by which their services were terminated. The said petition was allowed by the learned Single Judge by judgment dated September, 1991, against which Divisional Forest Officer, Surendranagar and State of Gujarat have filed Letters Patent Appeal No.269/92. In the above referred to writ petitions, following directions are given by the learned Single Judge:

"In the result, all these three petitions are accepted. The order of termination of service at Annexure-B to each petition is quashed and set aside. The petitioners of all these three petitions are held entitled to be reinstated in their services. The respondents are directed to order the petitioners' (in all these three petitions) reinstatement in their services as expeditiously as possible, but in any case latest by 30th September, 1991. The petitioners of all these three petitions will be entitled to all service benefits including backwages as if uninterrupted by the order of termination of their services. Rule is accordingly made absolute in each petition, however, with no order as to costs on the facts and in the circumstances of the case."

The judgment rendered by the learned Single Judge as well as directions given in the above referred to petitions have given rise to present appeals.

4. Learned Counsel for the appellants in three appeals contended that the appointments of the

respondents as Forest Guards were irregular and, therefore, learned Single Judge was not justified in setting aside the order by which their services were terminated. It was pleaded that termination of services of the respondents could not have been treated as contravening the principles of natural justice. What was stressed by the learned Counsel for the appellants was that in any view of the matter, the order of reinstatement with full backwages could not have been passed by the learned Single Judge when the respondents were althroughout in service pursuant to directions given by the Court in respective petitions which were filed by the respondents and, therefore, the appeals should be partly allowed.

5. M/s. S.M.Mazgaonkar, Jivanlal M.Patel and Manoj N.Popat, learsned Counsel appearing for the respondents submitted that the order terminating services of the respondents was illegal as well as contrary to the principles of natural justice and, therefore, learned Single Judge was justified in setting aside the same. What was emphasised on behalf of the respondents was that without affording an opportunity of being heard, services of the respodents could not have been terminated and, therefore, the wellfounded judgment of the learned Single Judge should be upheld in these appeals.

6. We have heard the learned Counsel for the parties. We have also taken into consideration the relevant documents which are on record of the original petitions. It is relevant to notice that against the judgment rendered by the learned Single Judge in Special Civil Applications No.1926/81, Letters Patent Appeal No.49/92 was filed and therein Division Bench has held that order terminating services of Mr. J.I.Joshi without affording an opportunity of being heard was illegal. The Division Bench has after examining legality of order dated May 7, 1981, by which services of the petitioner in Special Civil Application No.1926/81 and others were terminated, held as under :-

"Having considered the rival contentions, we hold that no fault can be found with the order of the reinstatement passed by the learned single Judge. Respondent was appointed in March, 1977 in the Department and he worked for four years and as a bolt form the blue he was terminated by the impugned order without giving any opportunity of hearing to the respondeent. This contention is unanswerable. Even if the authorities felt that the appointment given to the respondent was

irregular, he had actually worked as such for four years and if his services were to be terminated on the ground of initial irregular appointment, the minimum principle of natural justice would have been followed and he could have been given an opportunity of hearing before visiting him with the termination order. Impugned termination order, therefore, must be treated as null and void. The learned Single Judge has therefore, rightly held that the said order is inoperative in law. Once that conclusion is reached, result becomes obvious. Respondent has to be reinstated as a forest guard in services of the Forest Department on the same terms and conditions on which he was working prior to the impugned termination order. He has also to be given continuity of service with all consequential monetary benefits flowing from such reinstatement with continuity."

7. We may state that the order passed by the Division Bench in Letters Patent Appeal No. 49/92 was not challenged either by the Divisional Forest Officer or by the State of Gujarat before higher forum and has become final between the parties and, therefore, in view of the finding recorded by the Division Bench in the said appeal, it will have to be held that the learned Single Judge was justified in quashing and setting aside the order terminating services of the respondents on the ground that it violated the principles of natural justice. Even if the authority felt that the appointments of the respondents were irregular, the minimum principles of natural justice ought to have been followed, as they had put in service of more than four years when the impugned order was passed. Having regard to the facts of the case, we are of the opinion that the learned Single Judge did not commit any error in quashing and setting aside the order terminating services of the respondents on the ground that it violated the principles of natural justice. Similarly, direction given by the learned Single Judge that the respondents should be reinstated in service as if uninterrupted by the order of termination of their services, cannot be said to be erroneous at all so as to warrant interference of this Court in the present group of appeals. However, the respondents were in service althroughout pursuant to interim relief granted by the Court in respective petitions and this fact is not disputed by the learned Counsel for the respondents. Under the circumstances, direction to pay backwages to the respondents could not have been given by

the learned Single Judge and the said direction will have to be set aside while upholding conclusion of the learned Single Judge that the principles of natural justice were violated and, therefore, order dated May 7, 1981 was bad in law.

For the foregoing reasons, all the three appeals are partly accepted. The decision of the learned Single Judge to set aside and quash order dated May 7, 1981 is hereby upheld. The direction given by the learned Single Judge to the appellants to reinstate the respondents in service with continuity thereof, is hereby confirmed. However, the direction given by the learned Single Judge to the appellants to pay backwages to the respondents is set aside. The appeals are accordingly, allowed with no order as to costs.

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